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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M. Street, NW, Room 222  
Washington, DC 20554

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**Re: *Ex Parte* Presentation Concerning Issues Pertaining to CC Docket Nos. 96-45.**

Dear Mr. Caton:

On behalf of SoftWare at the FCC ("SW@T/FCC"), this letter is to advise the Commission that a meeting was held on August 5, 1996 between SW@T/FCC representatives, John Morabito and Mark Nadel to discuss issues related to: universal service and technology standards.

In attendance at the meeting were: Mark Nadel, Policy Program Division, Common Carrier Bureau; John Morabito, Deputy Division Chief, Common Carrier Bureau; Lance Scott, Novell, Inc. and; Glen Manishin, Blumenfeld & Cohen on behalf of Netscape. The enclosed document was distributed.

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. Section 1.206, two copies of this letter are enclosed for filing.

Any questions regarding this notice should be addressed to the undersigned.

Very truly yours,

Lance Scott  
Legislative Associate

Enclosure

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## SW@T/FCC

### An Introduction

#### WHAT IS SW@T?

SW@T/FCC ("SoftWare At the FCC") is a technology and policy advocacy coalition consisting of providers of Internet, intranet, database, and browsing software. SW@T/FCC companies -- including Netscape, Novell, Oracle, and Voxware -- are part of the rapidly growing U.S. Software Industry which directly employs 550,000 Americans and is the foundation for the larger software development industry exceeding 2 million U.S. jobs. Indeed, the software development industry is one of the five top manufacturing sectors in the nation.

#### WHY SW@T IS CONCERNED?

The SW@T Members represent an industry that has been extraordinarily successful without government involvement; software markets are robustly competitive, never requiring governmental regulation. We are nonetheless concerned that accelerating convergence of the computing and communications industries may result in attempts to impose direct economic regulation on network software manufacturers or may inadvertently sweep software firms into the regulatory arena, where our entrepreneurial backgrounds and comparatively small size place software firms at a distinct disadvantage to established telecommunications providers. Although the FCC has traditionally looked to marketplace competition as the best regulator, SW@T is troubled by indications that local exchange carriers and other established telecom firms may ask the FCC to impose restrictive regulation on the Internet and the computer network software firms supporting Internet and intranet-based communications.

#### SW@T'S MISSION:

SW@T's objective is thus to assist the FCC in harmonizing telecommunications deregulatory activity with the competitive needs of the software industry. We do not at this time advocate any specific rules, but instead propose general principles and a problem-solving approach that can be applied in a wide variety of FCC proceedings. (SW@T intends to participate in FCC rulemakings on specific subjects in the future.) SW@T also offers the FCC its deep technical expertise on Internet, intranet and other computer-based communications issues.

#### FOUR GOALS FOR SW@T:

1. **Educate** the FCC and other telecommunications policy decision-makers regarding issues critical to preserving advanced telecommunications networks such as the Internet.
2. **Protect** the primary intent of the Telecommunications Act of 1996, to deregulate and increase competition for U.S. telecommunications markets.

3. **Enable** the FCC to become a long-term positive force in the development of the Global Information Infrastructure (GII).
4. **Ensure** that future FCC actions, however well-intentioned, do not result in undue regulation of software and other competitive markets.

# **SW@T's Priorities for Increasing Competition in Telecommunications Markets**

A Summary

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## **UNIVERSAL SERVICE/ACCESS FEES -- PERMIT FREE MARKETS AND COMPETITION TO WORK**

Continue the Commission's historic deregulatory approach to software-based services by retaining the Computer II paradigm and by implementing rules that utilize, to the greatest extent possible, market forces to drive down costs for access to advanced telecommunications technologies. Reduce access charges to cost-based levels before even contemplating whether "enhanced" Internet communications services should be subject to access charges.

## **STANDARDS -- EMPOWER CONSUMERS BY PROMOTING INDUSTRY STANDARDS ON A GLOBAL LEVEL**

Promote voluntary industry standards through multilateral negotiations on a global level. If technology standards are needed to remedy legitimate consumer harm, and only after private, industry-led standard setting bodies have failed to address these needs, mandated standards should be minimal technically and equal functionally for all competing products.

## **INTERCONNECTION -- PROPEL ADVANCED SOFTWARE NETWORK INNOVATION**

Preserve advanced computer networks by excluding LAN, WAN and other software-based, enhanced networks and services from interconnection mandates which requires them to open their network to competitors and implement inflexible, primitive government standards to ensure interconnectivity.

# **The Roadmap to Deregulation**

## **A Perspective of SW@T/FCC -- A Coalition of Software Businesses**

The U.S. Software Industry has thrived for more than two decades without government regulation. Now ranked one of the top five largest manufacturing sector in the United States, companies in the software development industry are fueling the nation's economy, employing 2 million Americans and expanding at double-digit growth rates each year. Many of the most important applications for American business and personal communications -- from voicemail to intranets -- are made possible through innovations pioneered by U.S. Software companies.

Unfortunately, there are a number of signals suggesting that the government's traditional "hands off" role towards software may be changing. And as technology continues to develop, industries that historically have been sheltered from the all-out competition that characterizes the U.S. Information Technology industry are likely to try and use regulation as a shield to protect their markets from the threat of new forms of software-based competition. One example is the recent ACTA Petition -- asking for a governmental ban on the sale of Internet telephony software -- that urges the FCC to halt the progress of this industry through unnecessary and misguided regulation. Recognizing the potential adverse consequences of the ACTA Petition and potential future FCC actions, SW@T/FCC ("SoftWare at the FCC") has been formed to serve as an information and advocacy resource for telecommunications and technology policy makers.

SW@T'S basic principle is that government regulation of advanced technology harms consumers because it limits technology innovation and undercuts consumers' ability to choose a variety of products at increasingly lower costs. Fortunately for consumers, much of the FCC's Common Carrier decision making over the past three decades, has followed this same philosophy including the Computer I, Computer II, competitive carrier proceedings, as well as Congressional actions such as "forbearance" provisions of the 1996 Telecommunications Act. As convergence between telecommunications and computing proceeds, SW@T Members urge the FCC to apply these same pro-competitive, pro-consumer principles to its decisions on cutting-edge issues operating at the confluence of computer networks and traditional circuit-switched telecommunications networks, such as Internet telephony, access charges, universal service and interconnection/unbundling.

### **FOUR GOALS FOR SW@T:**

1. **Educate** the FCC and other telecommunications policy decision-makers regarding issues critical to preserving advanced telecommunications networks such as the Internet.
2. **Protect** the primary intent of the Telecommunications Act of 1996, to deregulate and increase competition IN U.S. telecommunications markets for the benefit of consumers.
3. **Enable** the FCC to become a long-term positive force in the development of the Global

Information Infrastructure (GII).

4. **Ensure** that future FCC actions, however well-intentioned, do not result in undue regulation of software and other competitive CONSUMER markets.

## **THE ROADMAP TO DEREGULATION: FOUR QUESTIONS TO ASK BEFORE ACTING**

Four questions which should be asked before implementing regulations:

1. Does the proposal increase or limit competition?
2. Does the proposal increase or limit consumer choice?
3. Does the proposal increase or decrease consumer long or short term costs?
4. Does the proposal increase or limit technology innovation?

# **SW@T's Priorities for Increasing Competition in Telecommunications Markets**

## **Universal Service/Access Charges**

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**Background:** While universal access to the Internet and other advanced telecommunications is a goal of software industry, the best course to achieve this goal is a minimal universal service regime recognizing the benefits of market forces to drive up innovation, drive down costs, enhance interconnectivity, and improve consumer choice. On the other hand, an expansive universal service mechanism which taxes software businesses will result in less innovation, higher costs, and reduced access for consumer. In addition, State regulation of Internet access charges is inappropriate because -- by definition -- Internet communications are interstate and therefore beyond state jurisdiction.

### **Recommendations:**

1. Continue the Commission's historic deregulatory approach to software-based services by retaining the Computer II paradigm and the Commission's policy to separate software and common carrier functions (e.g., CPE detariffing and not regulating telecom network software or equipment vendors).
2. Implementing rules that utilize, to the greatest extent possible, market forces to drive down costs for access to advanced telecommunications technologies.
3. Reduce telecom carrier access charges to cost-based levels before even contemplating whether "enhanced" Internet communications services should be subject to access charges.
4. Rationalize universal service by establishing an external, explicit, and non-discriminatory structure for recovering and distributing any necessary subsidies.
5. Promote "enhanced" services by not requiring software providers for these services to pay access charges to local telephone companies.
6. Encourage innovation by not permitting State regulation of the Internet, including access charges (and sales/excise taxes directly linked to advanced telecommunications access), which hamper the development of already competitive markets.
7. Preserve advanced telecommunication networks by excluding software under the definition of telecommunication "carrier" or "service provider."

# SW@T's Priorities for Increasing Competition in Telecommunications Markets

## Standards

**Background:** The FCC has in the past and will likely continue to be pressed to implement potentially limiting standards on behalf of certain businesses that have traditionally been subject to regulation. As witnessed during current rulemaking proceedings at the FCC, Congress has reacted adversely to wide-scale mandatory standards for interoperability and compatibility, requiring instead that the Commission defer to private, voluntary industry standards and minimize government's role in setting technical standards in rapidly changing marketplaces. This legislative perspective is underscored in the Telecommunications Act of 1996 which limits the FCC's role in developing and/or implementing mandatory technology standards because such standards may limit the competitiveness of U.S. businesses, suppress innovation, and lead to increased costs for American consumers. Despite the Act's limitations, older, regulated industries are continuing their efforts to use FCC standards to achieve by regulation what they could not do in the marketplace itself. These areas include digital television/video, set-top box unbundling and wireless Internet services.

### Recommendations:

1. Advance the Global Information Infrastructure (GII) by promoting private industry standards through international multilateral negotiations. The Commission's traditional use of U.S. policy to encourage liberalization of foreign regulatory practices, and its reluctance to impose mandatory standards on the PSTN, all support an active international role directed toward promoting voluntary industry standards.
2. Recognize expressly that technological competition, even among directly competing standards, is in the public interest, allows consumers the widest choice of products and leads efficiently to seamless interconnectivity. For example, there are competitive standards in several technology markets which produce thousands of products at increasingly lower costs including PCS, Desktop/Network Operating Systems (OS/ NOS), Internet/intranet browsers, and VCRs. Therefore, the FCC should not mandate technology standards except where 1) private, industry-led standard setting bodies have failed, 2) a proposed standard is needed to remedy a legitimate consumer harm, and 3) the standard is minimal technically and equal functionally for all competing products.
3. Increase market competition and innovation by ensuring that existing and proposed standards do not discriminate against computer software and hardware providers. Open the Commission's standards processes by insisting that traditional broadcast, telecom and equipment standards bodies, and FCC-sponsored advisory committees, solicit the views and concurrence of the computer and software industries for proposed FCC standards.



# **SW@T's Priorities for Increasing Competition in Telecommunications Markets**

## **Interconnection**

**Background:** As the definitions of telecommunications, carrier, and service provider are reformulated, there is threat that advanced telecommunications software -- including local and wide-area network software systems -- will be encompassed under mandatory rules for interconnection, including the obligation to connect with other carriers. While the Telecommunications Act of 1996 justly targets incumbent, monopoly telecommunications providers for interconnection, software businesses could be affected if they are incorrectly classified as telecommunications "service provider" or "carriers" under general obligations in the Act. Any move to expand the interconnection requirements to software could be disastrous for advanced telecommunication networks such as the Internet or intranets, which would collapse under requirements that all competitors be able to connect at any "technically feasible" point in the network.

### **Recommendations:**

1. Preserve advanced computer networks by excluding LAN, WAN and other software-based, enhanced networks and services under the definition of telecommunications "carrier" or "service provider."
2. Preserve advanced computer networks by excluding LAN, WAN and other software-based, enhanced networks and services from interconnection mandates which require them to open their networks to competitors and implement inflexible, primitive government standards to ensure interconnectivity.